CBIA
Connecticut Business & Industry Association

TESTIMONY OF
ERIC J. BROWN
BEFORE THE COMMERCE COMMITTEE
FEBRUARY 26, 2009

Good morning. My name is Eric Brown and I am associate counsel for the Connecticut Business and Industry Association (CBIA). CBIA's membership is comprised of thousands of Connecticut businesses from the largest to the smallest with the collective goal of making Connecticut a more attractive place for businesses to invest and thereby grow jobs and our economy.

CBIA appreciates this opportunity to provide comment on **HB-6097, AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.**

CBIA supports the intention of this bill. However, we believe it is critical for this committee to advance additional measures (please see attached) to foster brownfield development in Connecticut.

CBIA appreciates the efforts of this committee and the Brownfields Task Force to focus attention on environmental liability and the significant role it often plays in deterring investment in brownfield redevelopment in Connecticut.

HB-6097 attempts to expand opportunities for the redevelopment of mills and brownfields located in floodplains, clarifies municipal liability in cases where they take control of brownfield sites, and modifies opportunities for cost-recovery from responsible parties to be more consistent with federal law.

However, the bill does not address what we see as the most pressing liability reform needed to spur investment in brownfield redevelopment: providing liability protection for developers willing to invest in remediating and revitalizing contaminated brownfields in Connecticut.

Connecticut's liability scheme for contaminated properties is most fundamentally premised on the concept of "the polluter pays." This simple

moniker makes sense at first glance. Unfortunately, under Connecticut law, the term "polluter" includes the property owner – regardless of whether that owner had any role in the property's history of contamination.

Connecticut must change its frame of reference with respect to brownfield redevelopment and how it relates to developers interested in investing in brownfield properties. These investors should be enthusiastically welcomed for their unique ability to deliver environmental improvement, economic growth and job creation.

Unfortunately, with every intention of fostering successful redevelopment projects, Connecticut presents brownfield developers with a maze of multi-agency regulations and administrative hurdles. We consider it progress when we're able provide the developer with a map of the maze – believing this will make our state a more attractive place for investment. Unfortunately, the maze is like the old game where one uses two knobs on either side of a box to guide a marble through a maze that includes many holes through which the marble can drop.

CBIA believes the time is now to address a major fundamental roadblock to revitalizing our brownfields by instituting an "off-ramp" from the "polluter pays" policy for brownfield developers that have no connection to the contamination associated with the site.

Accordingly, we offer the language attached to this testimony for your consideration. Adoption of our suggested concepts would, without meaningful fiscal impact to the state, significantly advance our state's goal of cleaning up contaminated properties and replacing them with vibrant, job-creating economic development projects.

Thank you for this opportunity to comment.

CONCEPTUAL OUTLINE ESTABLISHING CRITICAL LIABILITY RELIEF FOR BROWNFIELD REDEVELOPERS.

No later than January 1, 2010, the Department of Environmental Protection shall adopt regulations establishing the following policies and procedures with respect to brownfield redevelopment:

Section 1

(a) Eligibility - Eligible Parties and Eligible Sites must qualify with the Department to participate in the program. The following parties shall be Eligible Parties under the Program:

i. An Innocent Landowner, including municipalities;

ii. A Bona Fide Prospective Purchaser ("BFPP" as defined under federal CERCLA); or

iii. A party who receives property from either an Innocent Landower or a BFPP and has no prior relationship to the site.

(b) An Eligible Party who wishes to participate in the program may only do so if the site in question is also eligible. Eligible Sites must meet the following requirements:

i. The site must have suffered a release of regulated substances that exceed RSRs;

ii. The site must have potential for productive re-use, as determined by the Department;

iii. The site may be nominated by municipalities; and

iv. The Department may select sites not already subject to application by a private party or nominated by a municipality.

(c) Not withstanding the foregoing, sites undergoing enforcement action by DEP under any current DEP program or on NPL are not Eligible Sites. Sites currently in Transfer Act process, if otherwise eligible, may participate in this program.

Section 2.

Sites that are selected for inclusion in this program by the Department shall adhere to the following requirements:

(a) Transactions for properties that have completed cleanup under this program will be conditionally exempt from the requirements of the Transfer Act, as follows:

i. Completion of program makes site eligible for a Form II filing under the Transfer Act, or

ii. Completion of remediation exempts the site from future obligations under the Transfer Act, provided that no future activities would make the site an "Establishment" under the Transfer Act.

(b) Assessment and remediation of all Eligible Sites accepted into program may be led by a licensed environmental professional, unless the Department specifically requires Departmental lead of the site.

(c). Eligible Sites shall not be liable for contamination emanating to offsite properties, however, applicant must remediate source of contamination if the Department determines upon additional investigation that a continuing significant environmental endangerment exists pursuant to CGS 22a-6u.

(d). Eligible Party must take "reasonable steps" and "appropriate action" as required under CERCLA for liability protection.

Section 3.

Process for application. To apply for the program, the following process shall be used:

(a). The Department, acting in conjunction with the Office of Brownfield Remediation and Development ("OBRD") shall be solely responsible for eligibility determination, liability/cleanup
supervision, and funding, if appropriate.

(b). The Department and/or OBRD shall act as ombudsman for applicant in expediting permitting, so long as applicant is complying with remediation schedule ("Site Agreement")

(c) An Eligible Party or a municipality shall submit a program nomination to the Department with an Environmental Condition Assessment Form and all documentation demonstrating all eligibility criteria for
the site and all parties.

(d). The Department (with consultation with OBRD and other state agencies as appropriate) to have 90 days to respond as to completeness of application and initial eligibility both for participation in the
program and any funding from the state.

(e). If site and parties accepted into program, then the parties shall work with the Department to establish deadlines for submission by the Eligible Party of a schedule for any further site characterization
work required by the Department, and for Departmental response. Once the
site characterization is accepted, the Eligible Party and the Department shall develop a schedule for submission by the Eligible Party of a Remedial Action Plan and for a response by the Department.

(f) Site Characterization and Remedial Action Plans shall include both interim status or other appropriate interim target dates and a target date for project completion (with ability to extend for good
cause).

(g) Funding applications, if appropriate, shall be submitted within specific time after approval of entry into program.